IN THE CIRCUIT COURT OF NORFOLK COUNTY, VIRGINIA.

MARY AUGUSTA BARRAUD *v.* SALLY T. BARRAUD, et als.

October 13, 1913.

In Chancery.

1. **Evidence—Statutory Presumption of Death of Absentee—Rebuttal.**—The statutory presumption of death after an absence of seven years created by § 3373 of the Code is rebuttable.

2. **Same—Same—Title Dependent upon Survivorship—Burden of Proof.**—In construing § 3373 of the Code, the rule of law is that there is no presumption of life or death at a particular time during the seven years. That is a matter of evidence; and the onus of proving survivorship after a particular time is upon the party to whose title that fact is essential.

3. **Same—Same—Same—Case Stated.**—B.'s father was tenant for life of certain real estate with remainder to his lawful issue, if any, surviving at his death. B. disappeared from his home in Richmond, leaving a letter to his wife, in which he declared that he was leaving the state, never to return. Attached to the letter was a deed, duly executed and acknowledged, conveying to the wife his entire interest, present and future, in the property of which his father was life tenant. Nearly five years thereafter, the father died, leaving other children. In a proceeding brought by one of such children, after the fathers' death, and more than seven years after B.'s disappearance, to determine what interest, if any, B. or his wife had in the land, and to partition the same, the burden of establishing B.'s survivorship was upon his wife.

4. **Same—Same—Evidence to Aid or Rebut Presumption—Circumstances of Disappearance.**—To strengthen or rebut the presumption of death created by the statute, the facts and circumstances connected with the disappearance of the absent party are admissible in evidence, since the strength of the presumption lies, not so much in the fact of his absence for the statutory period, as in the cogency of the circumstances of his disappearance; such as that he was a fugitive from justice, or under a cloud as to his character, or any other fact or circumstance tending to explain his going, his motive in remaining away, or his failure to communicate with his home.

5. **Same—Same—Evidence Held Sufficient to Rebut Statutory Presumption.**—The circumstances of this character in this case considered, and held to afford natural and sufficient ground for the conclusion that the failure of the absentee's family to hear from him was the result of his expressed purpose not to communicate with them, and was not attributable to his death; that under the circumstances, the statutory presumption of death could not prevail, even if the ab-

sence of the contingent remainderman prior to the death of the life tenant had extended over the full seven years.

6. Same—Same—Absentee Seen Alive—To What Time Proof Relate.—Where, in a proceeding to partition land and to determine the interest of a certain claimant therein, the interest of such claimant is dependent upon proof that the contingent remainderman, under whom she claims, and who, at the time of the proceeding, has been absent from the state for more than seven years, survived the life tenant, proof that he was seen alive several years after his departure is forceful to rebut the presumption of death, whether it relate to a time before or after the death of the life tenant.

7. Same — Same—Evidence of Single Witness — Sufficiency. — In such a case, the testimony of a single credible witness, unimpeached and unrebutted by other facts or circumstances, that he saw the absent person alive after the death of the life tenant, is conclusive on the question of survivorship.

8. Deeds—Delivery—Necessity.—The grantee in a deed can not take thereunder, unless there was a legal delivery of it.

9. Deeds—Delivery—Question of Law or Fact.—Whether or not there was such complete and perfect delivery of a deed from a grantor to a grantee as to vest a perfect title in land, or an interest therein, is a question of fact to be determined by the circumstances of the case, and can not, in the majority of instances, be declared as matter of law.

10. Same—Same—Sufficiency of Evidence to Show Delivery.—B, being financially and otherwise involved, duly executed and acknowledged a deed, conveying all his interest, present and future, in certain property to his wife, and attaching it to a sealed letter addressed to his absent wife, placed deed and letter in a locked desk in his office in such conspicuous manner that they would be sure to be seen upon the opening of the desk. He then gave the key to his mother, saying nothing as to his intentions, or as to the deed or letter, and left for parts unknown. His family caused deed and letter to be placed in possession of his wife, and the letter was found to be a statement to the wife of his reasons for conveying the property to her and of his intention to leave the state and never return. Held, that these facts manifested a purpose of surrendering all dominion over the deed, and constituted a good delivery.

11. Same—Same—Same.—The fact that the letter was unsigned and undated was immaterial; it being admitted to be in the handwriting of the grantor, and the letter itself bearing inherent proof that it was written between the date on which the deed was acknowledged and the day on which he disappeared.

Williams & Mullin and *Robert W. Stump*, for the plaintiff.
Theodore S. Garnett, for Mira Rosa Barraud.
W. L. Williams, for Sally T. Barraud.

OPINION.

J. T. LAWLESS, Judge: This is a bill in equity to partition land. On the 26th day of August, 1903, Philip St. George Barraud disappeared from his home in the City of Richmond. He had been residing there with his wife in the house occupied by his father and mother, one brother and two sisters. He was a practising lawyer thirty-three years of age at that time. He was in excellent health and of sober habits. He had no children. At the time of his disappearance, his wife was visiting the home of her mother in another state. Upon receiving intelligence of his departure, she caused an examination of his office and papers to be made. The key to his desk was in possession of his mother, with whom he had left it. Lying conspicuously on the inside of this desk, in such position as to attract attention, was a deed dated on the 18th day of August, 1903, eight days before the day of his disappearance. Attached thereto was a sealed envelope addressed to his wife. The signature and handwriting in the body of the deed was that of the missing man. After reading the deed, the members of the family agreed that the papers should be delivered to his wife as soon as possible. This was done by two messengers, who went to North Carolina for the purpose.

The deed purported to convey to his wife all the grantor's present and future interest in the tract of land in controversy. The sealed envelope contained a communication, also entirely in his handwriting, which among other things, expressed his purpose of leaving this country forever and going to Mexico. The deed was admitted to record on October 2nd, 1903, being found to be in proper form and duly acknowledged.

The lengthy communication in the sealed envelope was addressed on the inside to "Dear Sally." It was unsigned and undated. In it reference is made to his wife in the highest terms. He refers to the execution of the deed, attached to which it was found, and gives information that all of the money obtained from her mother, amounting to a large sum, had been totally lost. The consideration named in the deed is forty-five hundred dollars.

Within a few weeks, the missing son was indicted for forgery in making and uttering certain negotiable notes and a deed of trust. Subsequently, a *nolle prosequi* was entered to this bill of indictment. It also appears that about this time, his wife executed a deed of trust to secure the payment of a debt of $3000, giving her interest in the property conveyed by her husband as security.

He has not returned to the State, so far as is known, and has not communicated with any member of his family.

The subject matter of this suit has been fruitful of litigation. It has been before the appellate court several times on questions not involved in the pending controversy.

By a codicil to the will of its then owner, Daniel Cary Barraud, the land (known as the Barron Farm) was devised to the father of the missing man "for his life, with remainder to his lawful issue if he die leaving (any) and should he die without leaving lawful issue, then to revert to my heirs. * * *"

The will and codicil were duly probated on November 9th, 1867. On June 28th, 1908, the life-tenant died. Surviving him were the complainants, Mary Augusta and Mira Rosa Barraud, unmarried daughters; and Daniel Cary Barraud, Jr., all of whom lived with their parents.. The last named conveyed his interest to complainant, survived the life-tenant and has since died. He need not be further considered. Another son, St. Julian Barraud, unmarried, pre-deceased the life-tenant. He, also, requires no further consideration.

Complainant exhibited her bill in chancery on the 25th day of June, 1912 (about nine years after the date of disappearance) against Sallie T. Barraud, Philip St. George Barraud and Mira Rosa Barraud. It alleges, in substance, that the only lawful issue of the life-tenant, living at the time of his death, were the two daughters, Mary Augusta and Mira Rosa, unless Philip survived his father; that the missing man never acquired any interest in the land; that unless it can be shown that he survived his father, which complainant denies, it cannot be established that he ever acquired a vested interest under said will, thus leaving complainants, Mary Augusta, Daniel Cary Barraud, Jr. (who conveyed his interest to Mary Augusta) and Mira Rosa Barraud, the only remaindermen under the will who could and did comply with and qualify under its terms. The prayer is for an enquiry to ascertain what portion of the land remains undisposed of; that Philip, if living, and his wife, Sallie T., be required to show what interest, if any, they are entitled to in the land; that a partition in kind be made in accordance with the respective shares of the parties; and for general relief.

There was a demurrer to the bill filed by the defendant, Sallie T. Barraud, which was overruled. Thereupon, Mira Rosa Barraud filed her answer admitting the allegations in the bill and uniting in its prayer. Sallie T. Barraud also filed an answer denying material allegations and alleging that she is seized in fee and is in possession of all of the land. Philip St. George Barraud was summoned by order of publication, but made no appearance.

Depositions were taken, and the cause, after argument, is submitted for judgment.

But two questions need be considered: First, that of the survivorship of the missing man over the life-tenant; and next, that of the delivery of the deed of August 18th, 1903, to the missing man's wife.

The burden of establishing the fact of survivorship is on the defendant, Sallie T. Barraud, who claims through her missing husband by virtue of his deed. If she fails in this, she has no case. Evans *v.* Stewart, 81 Va. 724. The sole reliance of her adversaries in interest is upon the presumption of death which arises out of the statute upon an absence from the state without tidings for a period of seven years. Code 1887, § 3373. In construing this statute, the rule of law as established in this state in the cases of Evans *v.* Stewart, *supra,* and Security Bank *v.* Equitable Life Society, 112 Va. 462, is that there is no presumption of life or death at a particular time during the seven years. That is a matter of evidence; and the *onus* of proving survivorship after a particular time, in this class of cases, is upon the party to whose title that fact is essential. Evans *v.* Stewart, *supra,* at pp. 736, 737.

To sustain this burden, the defendant wife relies upon the facts and circumstances of her husband's disappearance and the testimony of a witness who claims to have seen him alive after the death of the life-tenant. Her contention is that the presumption of death is rebuttable, and that the evidence in the cause is sufficient to take the case out of the statute.

That the statute is rebuttable appears from its own terms. It reads:

"If any person, who shall have resided in this state, go from, and do not return to the state for seven years successively, he shall be presumed to be dead in any case wherein his death shall come in question, unless proof be made that he was alive within that time."

And it was held in Evans *v.* Stewart, 81 Va., at 739, that this is but a legislative declaration of the rule independent of its enactment.

"The presumption of death from long absence is of course not conclusive; but when it is shown to have continued for seven years or more unaccompanied by circumstances which reasonably account for his disappearance on a theory not involving his death, it becomes sufficiently strong to cast the burden of rebutting it upon the party asserting the continuance of life. 3 Elliott's Evidence, paragraph 2010; 1 Greenleaf Evidence, paragraph 41; Crown *v.* Lindsay, 30 Wis. 589. Slight evidence may sometimes be sufficient to rebut the presumption of death; but ordinarily it is a question for the triers of fact to determine whether the presumption shall prevail. In short, the circum-

stances both for and against the theory of death are to be taken into consideration, and therefrom the truth arrived at as nearly as may be possible under the established rules of law governing the adjudication of disputed facts." Magness *v.* Modern Woodmen, 123 N. W. 169; vide, Kennedy *v.* Modern Woodmen (Ill. 1910), 90 N. E. 1084.

"But in all the cases enumerated, lapse of time is, in a measure, a subsidiary matter. There must be a sufficient opportunity for investigation and search, and after the expiration of a period ample for these purposes, further stretches of duration without tidings may confirm the inference of death. But the strength of the induction of death lies in the cogency of the circumstances of the disappearance, and not in the fact of absence long protracted."

Modern Woodmen of America *v.* Gerdom (Kan. 1905), 82 Pac. 1100; followed in Caldwell *v.* Modern Woodmen (1913), 130 Pac. 642.

"The presumption of death does not in all cases necessarily arise from the mere fact that a person has been absent and unheard of for seven years or more, for there may be a variety of circumstances which will prevent any such assumption; such as improbability that the person who has been absent would have communicated with his home, or the fact that he was a fugitive from justice, or that there was a cloud upon his or her character." 13 Cyc. 305; II Chamberlain Modern Law of Ev., § 1116 et seq., with cases cited.

"Any fact which fairly and reasonably tends to rebut the inference assumed to be correct in the presumption of death is admissible. For example, it may be shown by the opponent that the absentee had a motive for his silence as that he was a fugitive from justice, had absconded from his creditors, or has some other reason for concealing his identity." II Chamberlain Ev., § 1117.

See also note in 26 Harvard Law Review, 378, referring to the two seventeenth century statutes out of which the modern rule of presumption arises: Smith *v.* Smith, 49 Ala. 156 (Chancery Suit).

In Tisdale *v.* Insurance Co., 26 Iowa 176; 96 A. D. 136, cited by Keith, P., in Security Bank *v.* Equitable Life Society, 112 Va. at 476, it is said:

"Any facts or circumstances relating to the character, habits, condition, affections, attachments, prosperity and objects in life, which usually control the conduct of men and are the motives of their actions, are competent evidence from which may be inferred the death of one absent and unheard from, whatever has been the duration of such absence. A rule excluding such evi-

dence would ignore the motives which prompt human actions and forbid inquiry into them in order to explain the conduct of men."

The following extract is a comprehensive statement of the rule, taken from the opinion of the Circuit Court of Appeals, Third Circuit (Oct. 1912), Fuller *v.* N. Y. Life Ins. Co., 199 Fed. 897, in reversing the judgment below:

"In discussing the presumption of death from an unexplained absence of seven years, Prof. Thayer, in his Preliminary Treatise on Evidence (page 319 et seq.) says that it is, and always has been, a rule of reasoning. Early in its development the jury were advised to follow it, because it probably accorded with the fact. Later, as experience showed its usefulness and strengthened its probability, they were given positive instructions to follow it, and it thus became what is often spoken of as a legal presumption or a rule of law. Either phrase is convenient enough, if care be taken to keep in mind that the presumption has never been conclusive or irrebuttable. It is a rule of reasoning, a short cut between evidence and conclusion, although it is now a rule that should be followed by whatever tribunal is obliged to pass upon the facts of a particular case. The stress is to be put on the word "unexplained." This has become the important question and it is always a question of fact. What weight is to be given to all the circumstances that attend a particular absence? And, as the final result of the inquiry, should death be inferred?"

The opinion cites the case of Modern Woodmen of America *v.* Gerdom, 82 Pac. 1100; 2 L. R. A. (N. S.) 809; and 13 Cyc. 297, et seq.

Vide, also, Mitchell *v.* Martin (Ky.), 55 S. W. 694; Winter *v.* Supreme Lodge, etc., 69 S. W. 666 (St. Louis Court of Appeals, 1902), construing the Kentucky and Missouri statutes, both of which are identical with that of Virginia.

These rules, stated in varying phrasing, are to be found in a large number of reported cases. In the main, the facts of this case are not disputed. They show the absentee to be a young lawyer thirty-three years of age, of excellent health and sober habits. His family and financial affairs he considered to be in such a tangle that he could no longer endure the strain. He resolved to leave the country and never return. In the event that he was successful in his new field and was ever able to replace a large sum of money which he had obtained from certain sources, he would send it on. The manner in which some of this money was obtained, points to the crime of forgery, for which he was subsequently indicted. His name was connected with that of a married woman and this fact had come to the

knowledge of his wife. He carried with him on the day of his departure the sum of nine hundred dollars in cash, raised at a time when he stated he had not a cent. He advised his wife to obtain a divorce and forget she ever knew such a man. He stated that he had contemplated committing suicide for some time, but thought he would "take this chance of making that money, as they would both bring the same disgrace." If followed, he said he would kill himself, but in case of impending death would so fix matters that his wife and family would be notified; otherwise they would never hear from him again, unless he could "return that money." His ostensible objective points were New York, Cuba and Mexico. Since his departure he has not communicated with any member of his family nor returned any portion of the money to which he referred.

Five and one-half years after his departure, and about seven months after the death of the life-tenant, as appears from the testimony of a witness, he was seen alive and talked to in New York City. Leaving out of consideration the testimony of this witness, and applying to the undisputed facts the "rule of reasoning" mentioned in the authorities, there appears to be natural and sufficient ground for the conclusion that the failure of the absentee's family to hear from him is the result of his expressed purpose not to communicate, and is not attributable to his death. In such a case, there is no presumption of death because the absentee has been unheard of for seven years. In Security Bank *v.* Equitable Life Society, 112 Va., at pp. 472-477, the opinion says that every case of this nature stands on its own particular facts; and, in differentiating two of the cases with which the reports of other states abound, continues:

"In Seeds, Executor *v.* Grand Lodge of Iowa, 93 Ia. 175; 61 N. W. 411, the court held that where a married man leaves home because his wife declines to live with him, and later professes to be unmarried and states that he is going to Dakota. He is in good health when last seen. Six years after his disappearance he is advertised for to receive a legacy. '*Held,* there is no presumption of death by reason of the fact that he has not been heard from in seven years. At any rate, it will not be presumed that he dies within two years after disappearing, so as to render valid an insurance policy which lapsed at the end of said two years for non-payment of dues and assessments.' In that case, while the law of Tisdale *v.* Insurance Co., *supra,* is not questioned, the facts of the two cases are differentiated, and Rowell, the beneficiary in the case from 93 Iowa, is shown to be a very different man from Tisdale. The court states that 'he was wanting in the character, habits, condition, affections, attachments and objects in life' which usually draw

men to their families, their homes, and the society in which they have lived. It was evidently not his purpose to return and dwell with his family, but, cast off as he was for his own fault, and with the character and inclinations which he evidently possessed, his object was to entirely withdraw himself from them. There is nothing in the condition of his health from which to infer death, for it is shown that when last seen, he was in usual good health."

The absentee in the present case was about thirty-eight years of age when the life-tenant died. He had impelling reasons for maintaining the silence which he declared he would maintain. No effort has been made by members of the family to ascertain anything concerning him, and but one effort on the part of a third party. No intelligence of his death, which he stated he would arrange to be sent to his family in the event of death impending, has been received. The evidence indicates that he was wanting in those characteristics and objects in life which usually draw men to their families, their homes and the society in which they have lived, and that his purpose was to withdraw himself entirely from family ties. In addition, it shows that he was heavily indebted financially and was indicted for a grave criminal offence. His health was said to be excellent and he was not addicted to habits calculated to impair it.

In these circumstances, the statutory presumption of death cannot prevail, even where it has extended over a period of seven years; while in this case, the period of absence up to the time of the death of the life-tenant was less than five years. Evans *v.* Stewart, 81 Va. at 741, 743; Seeds, Ex. *v.* Grand Lodge of Iowa, 61 N. W. 411. Enumerated lapse of time, says the court in Modern Woodmen of America *v.* Gerdom (Ken. 1905), 92 P. 1100, is in a measure a subsidiary matter. "The strength of the induction of death lies in the cogency of the circumstances of the disappearance and not in the fact of absence long protracted."

These undisputed facts would, without more, be sufficient to rebut the presumption of death. But a witness was introduced who testified that he actually saw and talked with the absentee, five and a half years after his disappearance, in the City of New York. This witness is a negro lawyer well known in Richmond, who had practiced his profession in the same courts with Barraud. It is not denied that the witness, on his return, did report the fact that he had seen Barraud in New York. Members and friends of the family heard it, according to their own testimony, though they gave it no credence. It is sought, however, to show that the occurrence took place prior to the death of the life-tenant in June 1908. Be that as it may, the

significant fact remains that the absentee was seen alive several years after his departure; and this is forceful on the question of rebutting the presumption of death. O'Kelly *v.* Felkner, 71 Ga. 775; Springmeyer *v.* Sovereign Camp, 129 S. W. 293 (Mo. 1910).

The method by which the witness fixed the precise time of the occurrence is worthy of note. When approached on the matter, after suit was brought, he stated he remembered the fact but not the time of the meeting. He was requested to make a search among his papers for some evidence that might enable him to fix the date. Failing in this effort, if it were ever made, the witness, when again approached, informed his interrogator he recalled that the meeting took place on the occasion of his visiting New York to fill an engagement with a prominent business man of the City of Norfolk; and that, as the engagement was made by correspondence, the date might be possibly ascertained by referring to the latter's letter files. The original letter of the witness to this gentleman was found and produced in evidence. It shows that the engagement was for the 21st day of January, 1909; and it is admitted that the witness filled the engagement as made.

If the testimony of this witness is credible, it is affirmatively conclusive of the question of survivorship. O'Kelly *v.* Felkner, *supra.* Some effort is apparent in the record to make light of him. Whatever may be the probative value of his testimony, it cannot be wholly disregarded. He is unimpeached; he appears to be without interest; he was subjected to prolonged and searching cross-examination; his testimony is corroborated in some of its details; and it cannot be said to be inherently untrue, or even improbable, in the light of all the facts. Whatever reliance, if any, is placed upon it, the whole case induces the conclusion that the absentee survived the period of the life-tenant's death on the 28th day of June, 1908.

This case is essentially different, on the facts, from that of Evans *v.* Stewart, *supra,* to which reference was made in argument. There, the witness Maguire claimed to have seen the missing man in front of a public place in the latter's home city, where he was well-known and where a legacy amounting to $30,000 awaited his claiming. His family also lived there at the time. They were wealthy and had exhausted every available effort to locate him. Under this state of facts, the court reached the conclusion that the missing man could not possibly have returned to his home city without his family having learned the fact from some source. In addition, the court states that the record teemed with evidence and circumstances

which powerfully sustained the presumption that he was dead and that he died long prior to the death of his father.

This brings us to the final question of delivery of the deed. Even though the missing man survived the life-tenant, the defendant, Sallie T. Barraud, cannot take under the deed unless there was a legal delivery of it. Whether or not there is such complete and perfect delivery of a deed from a grantor to a grantee as to vest a perfect title to land, or an interest therein, is a question of fact to be determined by the circumstances of the case, and cannot, in the majority of instances, be declared as matter of law. This is the rule of law as declared, within the past few weeks, by the Supreme Court of Appeals of Virginia in the case of Leftwich et als. *v.* Early, 8 Va. Appeals 315, 115 Va. —. The opinion, after referring to several authorities, says:

"The authorities cited, to which many more might be added if deemed necessary, hold that the delivery of the deed is essential to its validity; that the fact of delivery is one of intention, which intention must be manifested by some express act of the grantor, or by acts, words or conduct, manifesting an intention to deliver, and that by such act or delivery, the grantor must lose control or dominion over the deed in question; and that it is his intention that it should pass title at the time and that he (grantor) should lose control over it."

The opinion also quotes the following from 1 Devlin on Deeds, paragraph 262:

"As no particular form of delivery is required the question whether there was a delivery of the deed or not, so as to pass title, must in a great measure, where it is not clear that an actual delivery has been effected, depend upon the peculiar circumstances of each particular case. The question of delivery is one of intention and the rule is that a delivery is complete when there is an intention on the part of the grantor to make the instrument his deed. The main thing which the law looks at is, whether the grantor indicates his will that the instrument should pass into the possession of the grantee. A deed does not become effective until it is delivered with the intent that it shall become effectual as a conveyance. Whether such intention actually existed is a question of fact to be determined by the circumstances of the particular case."

In the case of Howe, Knox & Co. *v.* Ould & Carrington, 69 Va. at p. 11 (28 Grattan) Judge Staples on the question of what facts constitute a delivery of a deed says:

"And in Hutchman and wife *v.* Rust, 2 Gratt. R. 394, the deed was acknowledged before a justice but retained in the possession of the grantor. And yet this court held it a good

delivery, it being manifest that the grantor intended to hold it for the benefit of the grantee. According to all the authorities, the delivery of a deed is complete when the grantor has parted with his dominion over it, with intent it shall pass to the grantee, if the latter assents to it by himself or his agent."

These excerpts are but expressive of the rule laid down by a number of authorities of the Supreme Court of Appeals of Virginia and West Virginia on the point, and need not be extended.

The internal evidence of the deed shows that it was the intention of the grantor to convey thereby all of his present and future interest in the land. He prepared the deed himself and duly acknowledged it before a notary public. He attached it to the sealed letter, as already described. This he addressed to the grantee; placed it conspicuously in a locked desk; dispossessed himself of the key; and, having thus divested himself of its control, left for parts unknown. It thus appears that by his acts, his written words, and subsequent conduct, he manifested an intention to part with it as he has in fact parted with it, absolutely. These things indicate a purpose of surrendering all dominion over it with intent that it should become effectual as a conveyance. And this satisfies the law. The sealed letter attached to the deed evinces a desire on the part of the grantor to make some restitution for the misdeeds he had committed against his wife's family. He had obtained from her mother the sum of forty-five hundred dollars, the amount of the consideration named in the deed; and it is charitable to accept his statement that he lost it. He had been entrusted with the investment of twelve hundred dollars additional, for investment on her behalf; and that also had been lost. He earnestly expressed the hope that the suit in which this property was in litigation would end in favor of the Barraud heirs and that out of the interest therein which he had just conveyed to her, enough money would be realized for her support. His wife being temporarily absent, he placed the key of the depository in possession of his mother, whom he well knew would be most anxious to learn something of his whereabouts. In the nature of things, he knew she would institute a search which would result in the finding of the deed; and having attached it to a sealed letter conspicuously addressed to the grantee in blue pencil, doubly underscored as if to attract attention, he must have intended that, if the packet were not discovered by the grantee herself, it should be delivered to her by the person who chanced to open the desk. Certain it is, that the entire family so construed the grantor's intention, at the time; for it appears from the undisputed testimony that

it was delivered to her by their general consent, or with their knowledge and acquiescence. And this, after the contents of the deed had become known to the life-tenant of the property conveyed by it, who was, also, the head of the family. If the missing man entertained a contrary or different intention, it is entirely improbable that a man of his intelligence would have attached the two together and addressed the envelope to the grantee.

The fact that the sealed letter was not signed and was not dated cannot affect its evidential force under these circumstances. It contains inherent proof that it was written between the 18th day of August, 1903, when the deed to which it refers was acknowledged before the notary public, and the 26th day of August, 1903, when he disappeared. It is admitted to be in the handwriting of the absentee. And it must be accepted as the last expression of his wishes and purposes. A mere pencil memorandum, under similar circumstances, would be sufficiently indicative and evidential.

On this final branch of the case, the undisputed facts impel the conclusion that the grantor parted with and intended to relinquish, as in fact he has relinquished, all dominion over the deed as well as over the letter. They indicate his desire and purpose to have it come into the hands of the grantee coincidently with that letter. It would be unreasonable to hold that he intended the one, but not the other, to be so delivered; for his whole conduct and expressed sentiments, as well as the physical facts, negative a conclusion which seems to be both strained and improbable.

For these reasons, which will be filed with the papers and made a part of the record, the court is of opinion that the defendant, Sallie T. Barraud, the alienee of Philip St. George Barraud in the deed of conveyance of August 18th, 1903, is the successor in title to his interest in the land in controversy. A decree will be entered in accordance with this opinion; which, in addition, will direct an enquiry by a commission of such matters as may be necessary to enable the court to dispose of the cause finally.

A very important decision involving the personal liability of bank directors for the defaults of the officers and agents of the bank, by Judge Hundley of the Fifth Circuit, was crowded out of this number of the REGISTER, but will appear in the January number.